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13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16
17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 ETHAN ANDREW EVANS TINDUKASIRI,
21 Defendant.

22 CASE NO. 1:22-MJ-00117-SAB
23 1:22-MJ-00114-SAB

24 STIPULATION REGARDING EXCLUDABLE
25 TIME PERIODS UNDER SPEEDY TRIAL ACT;
26 ORDER

27 DATE: March 30, 2023
28 TIME: 2:00 p.m.
COURT: Hon. Sheila K. Oberto

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2 This case is set for a preliminary hearing on March 30, 2023. The parties agree and stipulate to
3 continue the preliminary hearing until May 19, 2023 at 2:00 p.m. before the duty magistrate. Defense
4 counsel has continued to be engaged in discussions and further investigation, and needs additional time
5 to conclude that process. Additionally, the parties are engaged in discussions and investigation of issues
6 related to the defendant's mental health, as well as consultation with or seeking consultation with
7 experts. There are complex factual and legal issues the parties are exploring, and believe that additional
8 time to conclude that process will be productive in moving the case forward.

9
10 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the
11 courthouse in June 2021, recognized the continued public health emergency, continued to authorize
12 video or teleconference court appearances in various cases, and noted the court's continued ability under
13 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and
14 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,

1 which “authorized the use of videoconference and teleconference technology in certain criminal
 2 proceedings under the in the Eastern District of California.” This and previous General Orders highlight
 3 and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)
 4 and (d), a preliminary hearing must be held “no later than 14 days after initial appearance if the
 5 defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the
 6 defendant does not consent and there is a “showing that extraordinary circumstances exist and justice
 7 requires the delay.” Here, the defendant consents and there is good cause.

8 Although the General Orders address the district-wide health concern, the Supreme Court has
 9 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 10 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 11 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 12 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 13 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 14 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 15 or in writing”).

16 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 17 and inexcusable—General Orders 611, 612, 617, 631, 652, and 662 (among others) require specific
 18 supplementation. Ends-of-justice continuances are excludable only if “the judge granted such
 19 continuance on the basis of his findings that the ends of justice served by taking such action outweigh
 20 the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A).
 21 Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either
 22 orally or in writing, its reason or finding that the ends of justice served by the granting of such
 23 continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

24 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 25 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 26 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 27 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 28 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court

1 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*

2 States v. Correa, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the

3 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a

4 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

5 In light of the societal context created by the foregoing, this Court should consider the following

6 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-

7 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date

8 for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any

9 pretrial continuance must be “specifically limited in time”).

10 **STIPULATION**

11 Plaintiff United States of America, by and through its counsel of record, and defendant, by and

12 through defendant’s counsel of record, hereby stipulate as follows:

13 1. By previous order, this matter was set for preliminary hearing on March 30, 2023.

14 2. By this stipulation, defendant now moves to continue the preliminary hearing until **May**

15 **19, 2023, at 2:00 p.m.** and to exclude time between March 30, 2023, and May 19, 2023, under Local

16 Code T4.

17 3. The parties agree and stipulate, and request that the Court find the following:

18 a) The parties are discussing and conducting further investigation into pre-

19 indictment matters, and need additional time to conclude.

20 b) Counsel for defendant desires additional time to consult with her client, conduct

21 further investigation, provide time for the government to assess information defense provided,

22 and further discuss charges with the government.

23 c) Counsel for defendant has received a report from an expert defense retained, and

24 the parties need time to further discuss and evaluate that.

25 d) The parties are engaged in discussions and investigation of issues related to the

26 defendant’s mental health, as well as consultation with or seeking consultation with experts

27 e) Counsel for defendant believes that failure to grant the above-requested

28 continuance would deny him the reasonable time necessary for effective preparation, taking into

1 account the exercise of due diligence.

2 f) The government does not object to the continuance.

3 g) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later
4 than 14 days after initial appearance if the defendant is in custody,” unless the defendant
5 consents and there is a “showing of good cause”. Here, the defendant consents and there is good
6 cause as set forth herein.

7 h) Based on the above-stated findings, the ends of justice served by continuing the
8 case as requested outweigh the interest of the public and the defendant in an indictment or trial
9 within the original dates prescribed by the Speedy Trial Act.

10 i) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
11 et seq., within which an indictment must be filed and within which a trial must commence, the
12 time period of March 30, 2023 to May 19, 2023, inclusive, is deemed excludable pursuant to 18
13 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by
14 the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served
15 by taking such action outweigh the best interest of the public and the defendant in a speedy
16 indictment/trial.

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3 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
4 Speedy Trial Act dictate that additional time periods are excludable from the period within which an
5 indictment must be filed and a trial must commence.

6 IT IS SO STIPULATED.

7 Dated: March 27, 2023

PHILLIP A. TALBERT
United States Attorney

9 /s/ KIMBERLY A. SANCHEZ
10 KIMBERLY A. SANCHEZ
Assistant United States Attorney

11 Dated: March 27, 2023

12 /s/ CAROL ANN MOSES
CAROL ANN MOSES
13 Counsel for Defendant
14 ETHAN ANDREW EVANS
TINDUKASIRI

15 ORDER

16 IT IS SO ORDERED.

17
18 DATED: 3/28/2023

Sheila K. Oberto

19 THE HONORABLE SHEILA K. OBERTO
20 UNITED STATES MAGISTRATE JUDGE